

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

JAN 06 2003

OFFICE OF  
MANAGING DIRECTOR

Ms. Leslie A. Taylor  
Leslie Taylor Associates, Inc  
6800 Carlynn Court  
Bethesda, MD 20817-4302

Re: Request for Waiver/Deferral of FY 2002  
Regulatory Fee  
Fee Control No. 00000RROG-03-027

Dear Ms. Taylor:

This letter is in response to your request for waiver or deferral of the Fiscal Year (*FY*) 2002 regulatory fee in the amount of \$103,200 filed on behalf of E-SAT, Inc.

You state that E-SAT is a licensee in the non-voice, non-geostationary mobile satellite service (NVNG MSS). You recite that although E-SAT has placed one satellite into service and is raising funds to construct and launch the other five satellites in its constellation, it does not yet generate revenue from its system. You explain that in the E-SAT system more than one satellite is required to be in use in order to provide service to commercial customers. In addition, you state that E-SAT'S majority stockholder, DBS Industries, Inc., has the sole financial responsibility for constructing, launching, and implementing the E-SAT system, and that DBS Industries has accumulated a deficit of \$42,152,073 from the development of the E-SAT program. In support, you attach balance sheets for DBS Industries as of December 31, 2001 and June 30, 2002. You submit that the Commission should waive the fee or defer payment until the E-SAT system is producing revenues.

In establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided *to* grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333,5346 (1994). recon. granted, 10 FCC Rcd 12759(1995).

Ms. Leslie A. Taylor

2.

Based on your showing that **E-SAT** has no operational revenue at present and its majority stockholder has incurred a substantial deficit of over \$42 million in developing the system, we conclude that you have presented a compelling case of financial hardship. Accordingly, your request for waiver of the FY 2002 regulatory fee is granted.

If you have any questions concerning this letter, please contact the Revenue and Receivable Operations Group at (202) 418-1995.

Sincerely,

  
✶ Mark A. Reger  
Chief Financial Officer

00000 RROG-03-02



**LESLIE  
TAYLOR  
ASSOCIATES**

6800 Carlynn Court  
Bethesda, MD USA 20817-4302

**Fax:** 301/229-3148  
Internet: ltaylor@lta.com

Tel. No. (301) 229-9410

September 20, 2002

Magalie R. Salas, Esq.  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: E-SAT, Inc., Call Sign S2149, File Nos. 26-SAT-PLA-95, 11-SAT-AMEND-98,  
SAT-MOD-20001229-00172, SAT-MOD-20020401-00059, Request for Waiver or  
Deferral of the Commission's Annual Regulatory Fee and Petition to Defer Payment**

Dear Ms. Salas:

Attached are an original and five copies of the above-referenced Request for Waiver or Deferral of the Commission's FY2002 Annual Regulatory Fee and Petition to Defer Payment.

If there any questions relating to this matter, please contact the undersigned

Sincerely yours,

**Leslie A. Taylor**  
Counsel, E-SAT, Inc.

cc: Andrew Fishel, Managing Director

Tom Tycz, Chief, Satellite and Radiocommunications Division,  
International Bureau

AS SOC. 11 & DIR.  
FED. COMM. COMMISSION  
20. 1 14 71 17 13



## I. Background

E-SAT, Inc., is one of several licensees in the non-voice, non-geostationary mobile satellite service (NVNG MSS), and has spent more than eight years and millions of dollars obtaining its Commission license, engaging in international coordinations, initiating construction of its system and successfully launching and placing into service its first satellite.<sup>2</sup> E-SAT currently is continuing to raise funds to support the completion of the other five satellites in the E-SAT constellation so that they can be launched and placed into service.

## II. The Annual Regulatory Fee for E-SAT Should be Waived or Deferred Until E-SAT Begins to Earn Revenue from the E-SAT System

The Commission's Annual Regulatory Fee for all non-geostationary satellite systems is \$103,200 per operational system. **An** operational system is defined **as** a system which has certified **as** of October 1, 2000 the operation of a single satellite pursuant to Section 25. **121** (d) of the Commission's rules. E-SAT does not dispute the applicability of the Annual Regulatory Fee to its system based on this criteria

However, the implementation of a single satellite in the E-SAT system does not enable E-SAT to generate revenue from this system. In the E-SAT system, more than one satellite is required to be in service to provide service to commercial users. At the current time, E-SAT is focused on raising funds for completion of construction and launch of the other five satellites in its constellation.

As the Commission is well aware, even large, well-funded MSS systems such **as** Iridium, Globalstar and ORBCOMM have experienced extreme financial difficulty. However, under new cost structures, these systems are continuing to provide service to customers and to implement new service. E-SAT, in contrast to these other systems, has always proposed a moderate, low-cost approach to provision of NVNG MSS service. The capital cost of the E-SAT system is estimated in the \$60-80 million range, in contrast to the initial \$5 billion for Iridium, \$4 billion for Globalstar and \$450 million for ORBCOMM.

Thus, E-SAT is confident that, with its system design, modest cost structure and focus on a few key market segments, such as energy monitoring and control, it can achieve success in the marketplace. E-SAT believes that it, as well **as** other MSS systems, also have **an** important role to play in providing critical first-line and backup communications, a need heightened by the recent terrorist attacks on the World Trade Center and the Pentagon.<sup>3</sup>

---

<sup>2</sup> See, *Letter from Leslie A. Taylor to Secretary, Federal Communications Commission*, dated August 30, 2000, advising the Commission that, on August 17, 2000, the first E-SAT satellite was brought into use.

<sup>3</sup> See, "Satellite Phones Showcased In Crisis", *Satellite News*, September 17, 2001, Vol. 24 No. 35.

Nevertheless, the highly visible financial difficulties of other non-geostationary MSS systems, combined with the overall capital markets and financial climate since early 2000, which has continued to worsen for the entire telecommunications industry, have significantly slowed down fundraising for completion of the **E-SAT** system. Payment of the annual regulatory fee imposes extreme hardship in the face of other capital and operating expense requirements for the E-SAT system.

E-SAT is awaiting Commission action on two pending applications. The first, SAT-MOD-2000 1229-00172, was filed in December 2000, and requests modification of its system license with regard to the altitude and orbital inclination of its satellites. Before proceeding with launch of additional E-SAT satellites, it is critical that this application be disposed of. In addition, **E-SAT** also is awaiting action on a request for extension of milestones, SAT-MOD-20020401-00059. This application, filed in March, 2002, is the only application for extension of milestones filed by a non-voice, non-geostationary system which was acceptable for filing and thereby placed on public notice. Both the modification request and the petition for extension of milestones **were** accompanied by the appropriate fees. The request for milestones **seeks** to extend the date of launch for the second **E-SAT** satellite from September 2002 and to extend the date **for** completion of construction of the remaining four satellites from March 2004 to March 2006 and the date of launch for those satellites from March 2004 to March 2006.<sup>4</sup>

### **III. Waiver or Deferral of E-SAT'S Annual Regulatory Fee Would Promote the Public Interest**

The Commission, over the past 30 years, has been the significant driver behind investment and innovation in the satellite communications industry throughout the world. From the early days of the Commission's "Open Skies" policies, which stimulated the development of commercial communications satellites providing voice, video and data, to its promotion of competition, and its willingness to support new technologies, the Commission has provided leadership to the entire world.

This leadership has resulted in U.S. dominance of satellite communications and an overall healthy and competitive multi-billion dollar business which includes: service providers, satellite manufacturers, launch services providers, and related businesses **such** as earth stations, teleports, Internet delivery by satellite and others. The innovation and success of the commercial space business likewise has benefited government procurement of satellite services and government satellite systems.

The Commission may feel concerned about the difficulties faced **by** the MSS industry. However, it should recognize that its patience with regard to Direct Broadcast Satellite paid off and **has** resulted in a vital **and** robust competitor to cable television. **If** the Commission had "given up" on DBS in the late 1980s (noting that the first U.S. DBS systems were licensed in 1982), or "given up" when the prominent first DBS system failed financially, it would have thwarted the introduction of essential competition in the video marketplace today. And, now DBS success, which really **was** not evident until the

---

<sup>4</sup> See, **E-SAT, Inc.**, Petition for Extension of Milestones, filed **March** 29, 2002.

late 1990s, is paving the way for introduction of new broadband services direct by satellite to end users. Even **as** the Commission has seen limited success in the implementation of competitive terrestrial service providers, satellites still offer a unique opportunity to provide broadband access and reduce the “digital divide.”

MSS systems, as well, including **E-SAT’S**, have an important role to **play** in the provision of communications services. **E-SAT** has moved forward to implement its system, placing its first satellite in service, thereby ensuring that the United States’ ITU filing for LEOTELCOM-2 could be perfected, and that the U.S. would have superior rights in the frequency bands for this system.

E-SAT strongly believes that MSS systems **will** play an increasing role in providing critical services **as** a part **of** the communications infrastructure, whether for messaging, metering and monitoring, search and rescue, and other types of emergency transmissions. As identified above, during the September 11, 2001 crisis, MSS systems played **a** role in enhancing connectivity and in serving as a back-up when terrestrial infrastructures were overloaded. In addition, MSS systems, including Iridium **and** ORBCOMM, which have emerged from bankruptcy, are making progress with growing their customer base.

Thus, waiver or deferral of the annual regulatory fee, until E-SAT’S system is receiving service revenue, would be in the public interest.

#### **IV. DBS Industries, Inc., E-SAT’S majority shareholder, Has Faced Financial Challenges in Development of the E-SAT System**

A requirement to pay the FY2002 annual regulatory fee also would **pose** a severe financial hardship to E-SAT’S majority shareholder, DBS Industries. Pursuant **to** the agreement with E-SAT’S other shareholder, Echostar, DBS Industries has the sole financial responsibility for constructing, launching and implementing the **E-SAT system**, as well as for any regulatory obligations<sup>5</sup>

DBS Industries, Inc., had cash on hand of \$34,362 as of June 30, 2002. The company had accumulated a deficit of \$42,152,073 from the development **of** the **E-SAT** program. Thus, payment of the **annual** regulatory fee would impose a substantial burden on the company which is making every effort to move the E-SAT project forward. This is addressed in more detail in the attached Petition to Defer Payment Due to Financial Hardship.

---

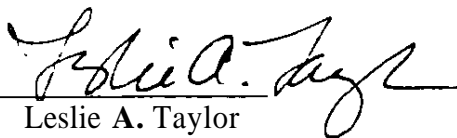
<sup>5</sup> See, *Application of Echostar Communications Corporation, Inc and DBS Industries, Inc.,/or transfer of control of the E-SAT license*, filed May 2, 2000. See, **also**, *Order and Authorization*. DA 00-2637, dated November 21, 2000, granted the transfer of control.

## V. Conclusion

Based on the foregoing, **E-SAT, Inc.**, respectfully requests that *the* Commission waive the FY2002 annual regulatory fee applicable to this system or, at a minimum, defer payment until the **E-SAT** system is receiving revenues from its system.

Respectfully submitted,

E-SAT, Inc.

By:   
Leslie A. Taylor  
Its Attorney

Leslie Taylor Associates, Inc.  
6800 Carlynn Court  
Bethesda, MD 20817-4302

Tel: (301) **229-9410**  
Fax: (301) **229-3148**  
E-mail: ltaylor@lta.com

September!/? 2002



# **DBS INDUSTRIES, INC.**

100 SHORELINE HIGHWAY, SUITE 190 A, MILL VALLEY, C A 94941

September 17,2002

**Mr.** Andrew S. Fishel  
Managing Director  
Federal Communications Commission  
445 12<sup>th</sup> Street, N.W  
Washington, D.C. 20554

Re: **E-SAT, Inc.** Call **Sign S2149**  
**Petition to Defer Payment of Annual Regulatory Fee Due to Financial Hardship**

Dear **Mr.** Fishel:

The purpose of this letter is to make representations and certify certain information in support of our petition to request waiver of the Annual Regulatory Fee applicable to the E-SAT satellite system **for** FY 2002.

The capital cost of the E-SAT system, currently estimated at only an additional \$60 to \$80 million of construction costs, is significantly lower than prior NVNG MSS services, and **we** anticipate **raising this** funding and completing our system. However, the highly visible **financial difficulties** of other non-geostationary MSS systems, combined with the overall capital markets and financial **climate** since early 2000, have significantly slowed down fund raising.

Payment of the annual regulatory fee at this time imposes extreme hardship in the face of other capital requirements for the E-SAT system. Pursuant to the agreement with E-SAT'S other shareholder, EchoStar, DBS Industries has the sole financial responsibility for constructing, launching and implementing the E-SAT system, **as well as** for any regulatory obligations.

**The** following provides a **summary** of the current financial status **of** E-SAT'S majority shareholder, **DBS** Industries, as of June 30,2002, which supports the request of this petition:

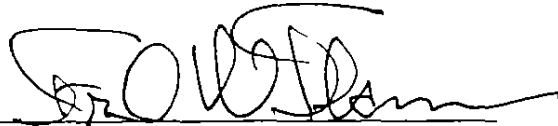
Cash on hand	\$ 34,362
Total current assets	82,411
Total current liabilities	4,900,055
Accumulated deficit	42,152,073

### **Anti-Drug Abuse Act Certification**

E-SAT, Inc. hereby certifies that no party to this Petition to Defer Payment of the FY 2002 Annual Regulatory fee and the related Request for Waiver or Deferral of the Annual Regulatory Fee is subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 853.

### **Application Certification**

The undersigned certifies individually, and for E-SAT, Inc and DBS Industries, Inc., that the statements made in this Petition and related Request **for** Waiver **of** Deferral **of** the Annual Regulatory Fee are true, complete and correct to the best of his knowledge and belief and are made in good faith.

  
Fred W. Thompson

Dated: September 17, 2002

Counsel:  
Leslie A. Taylor  
Leslie Taylor Associates, Inc  
6800 **Carlynn** Court  
Bethesda, MD 20817-4302  
Tel: (301) 229-9410  
Fax: (301) 229-3148